IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12298 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RUDABHAI DESABHAI HARIJAN - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR RM CHHAYA for Petitioner No(s).: 1.

MR PR ABICHANDANI AGP for Respondent No(s).: 1, 2,3.
DS AFF.NOT FILED (R) for Respondent No(s).: 4.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 08/08/2005

ORAL JUDGMENT

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1. In the present petition, the petitioner has challenged order dated 31/7/2004 passed by the Additional

Secretary which in turn confirmed the order dated 3/5/2001 passed by the Collector, Amreli.

2. The petitioner was granted land bearing Survey Nos. 251, 251/2, 252, 253/1, 253/2, 255/4 and 319 of Taluka Khambha, District Amreli admeasuring in all 23 acres and 22 gunthas by the Government as new tenure land for his personal cultivation. It is the case of the petitioner that he is aged about 73 years and he also suffers from Paralytic stroke. The land in question is, therefore, being cultivated with the help of his family members in particular his son Harijanbhai Rudabhai. However, his other son Shri Bhikhabhai Rudabhai who is Respondent No.4 herein and who is also working as Talati cum Mantri raised objections about the conversion of the land from new tenure land to old tenure. It appears that perceiving that there is some breach in the conditions of the grant of the land by the petitioner, the Dy. Collector passed an order on 3rd February, 1999 and cancelled the grant of the land in favour of the petitioner. The petitioner appealed against the said order before the Collector and after remand and order passed by the Dy. Collector once again approached the Collector which came to be rejected by an order dated 3rd

May, 2001. The Collector was pleased to confirm the order passed by the Dy. Collector on 28/11/2000 and upheld the conclusion that there has been a breach in the conditions of the grant of the land. The petitioner approached the Government against the order passed by the Collector. His revision application, however came to be rejected by the order dated 31/7/2004. In the mean time the petitioner also applied to the Collector for regrant of the land admeasuring 6 acres of Survey No. 252 and 4 acres and 4 gunthas of Survey No.319, his application however, came to be rejected by the Collector on 23rd May, 2005 stating that since the revision application filed by the petitioner has been rejected by the Government on 31/7/2004 his present application cannot be entertained.

3. Counsel for the petitioner submitted that the petitioner had not breached any condition and it was only on account of his physical incapacity that the land was being cultivated with the help of the labour of the family members which would substantially mean personal cultivation. He submitted that it was only on account of objection raised by his enstranged son the Respondent No.4 herein that the proceedings came to be initiated against the petitioner. He submits that the Respondent

No.4 is served with the notice of Rule in the present petition but has not raised any contentions. He, therefore, submitted that the stand taken by the Government is not justified and the application of the petitioner for regrant of the land should have been considered sympathetically.

4. Considering the submissions made, it appears that the order of the land granted in favour of the petitioner came to be cancelled by the authorities preliminarily on the ground that the petitioner was not cultivating the land personally. If the petitioner who is stated to be aged about 73 years is also suffering from physical disability and is cultivating the land through the labour of this family member, such a serious view perhaps ought not to have been taken. In any case, the petitioner had applied for regrant of the land, the same should have been in facts of the present case considered.

5. In the result, in facts of the present case, the order dated 23rd May, 2005 passed by the Collector is set aside. The said authority is directed to consider the application of the petitioner for regrant of the land which the petitioner gave on 20th February, 2005 and

decide the same sympathetically on merits without being influenced by the earlier orders passed by the revenue authorities cancelling the grant of the land to the petitioner. Counsel for the petitioner submitted that the petitioner has all through out been in the possession of the land in question. Both sides shall maintain status-quo with respect to the land which the petitioner has requested for being regranted until such time the Collector decides the application of the petitioner afresh as directed herein above. With these directions, the petition is disposed of. Rule is made absolute with the above extent.

6. Direct Service is permitted.

(Akil Kureshi, j.)

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